

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
May 13, 2009 Session

STATE OF TENNESSEE v. JOE RUSSELL ANGLIN

Direct Appeal from the Criminal Court for Davidson County
No. 2007-C-1902 Mark J. Fishburn, Judge

No. M2008-01532-CCA-R3-CD - Filed July 29, 2009

After a bench trial, the trial court found the Defendant, Joe Russell Anglin, guilty of driving under the influence (“DUI”) *per se*. On appeal, the Defendant contends that the trial court erred when it denied his motion to suppress evidence against him because the police had no legal justification to stop his vehicle. After a thorough review of the evidence and the applicable authorities, we affirm the trial court’s judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

Michael J. Flanagan, Nashville, Tennessee, for the Appellant, Joe Russell Anglin.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Melissa Roberge, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Kyle Anderson, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

This case arises from the Defendant’s stop and subsequent arrest for DUI in Davidson County on January 13, 2007. Before trial, the Defendant filed a motion to suppress the evidence obtained during the stop, alleging the stop was unlawful. At the hearing on this motion to suppress, the following evidence was presented: Officer Samuel Johnson, with the Metro Police Department, testified that on January 13, 2007, he arrested the Defendant. He explained that the police used a parking lot located at 2505 21st Avenue South to operate stationary laser technology, which they used to identify speeders. After identifying the speeders, the police used the parking lot, which was ideal due to its large size, to facilitate the stop of traffic offenders by waving the offenders into the lot. He added that the parking lot’s lighting and painted parking

lines made it ideal for any necessary standard field sobriety tests. Officer Johnson said that, generally, one officer would stand near the roadway and flag speeders into the parking lot. When the vehicle entered the parking lot, officers would direct the driver where to park to ensure the safety of the other officers in the parking lot. Then, other officers would write the offender a ticket or administer a field sobriety test if necessary.

Officer Johnson testified that, on the morning of January 13, 2007, around 12:40 a.m., four or five officers were working together in this parking lot. One officer was using a laser gun to monitor the speed of approaching vehicles, other officers were waving in traffic offenders, and other officers were conducting field sobriety tests on drivers who they suspected were inebriated. Officer Johnson testified that an officer had flagged a vehicle into the parking lot, and the Defendant, who was driving another vehicle, followed the first vehicle into the parking lot without being so instructed. The officers called out to the Defendant to stop because he had not been flagged. In order to ensure the safety of the officers and the drivers performing field sobriety tests, officers attempted to instruct the Defendant on where to park. Officer Johnson testified he shined his flashlight at the Defendant and yelled for the Defendant to “stop” while standing ten to twenty feet from the Defendant’s vehicle. The Defendant did not stop but rather drove through the parking lot where other officers were performing standard field sobriety tests and writing tickets. He then drove behind the building, at which point Officer Johnson lost sight of him. Officer Johnson testified that, because the Defendant was behind the building for longer than the officer would have estimated it took to turn around, he started to walk behind the building.

Officer Johnson testified that the Defendant drove his car from the rear of the building and that Officer Johnson motioned for the Defendant to come toward him because the officer wanted to ascertain what the Defendant was doing. As soon as the Defendant rolled down his window, the officer smelled the odor of alcohol emanating from the Defendant and his vehicle. The officer asked the Defendant if he had been drinking, and the Defendant responded that he had consumed two beers. The officer said that, at this point, his interaction with the Defendant became a DUI investigation. The Defendant then agreed to perform some standard field sobriety tests.

On cross-examination, Officer Johnson testified that “a couple” of officers were working in the roadway and by the vehicles in the parking lot. He said that, if they want to stop a vehicle, they step into the roadway, activate blue police lights, and then wave that particular vehicle into the parking lot. Officer Johnson said that, at this location, he had never before had a driver pull into the lot in error, having misinterpreted the officers’ signals to another vehicle. That had, however, happened at other locations. Officer Johnson agreed that the parking lot in which he was working the night of this incident was a public parking lot that was not blocked off. He also agreed that the Defendant did not violate any laws when he entered the lot. The officer agreed that the Defendant had not violated any laws before the officer stopped him.

The trial court denied the Defendant’s motion to suppress, agreeing with the State that Tennessee Code Annotated section 55-8-104 authorized the officers to stop the Defendant. As the State pointed out, that statute reads, “No person shall willfully fail or refuse to comply with

any lawful order or direction of any police officer invested by law with authority to direct, control or regulate traffic.” The trial court stated the officers “were directing traffic within the lot itself, [so] even if [the Defendant] voluntarily c[ame] in without being flagged down,” the Defendant would need to follow the direction of the officers telling him to stop and where to park. Further, the trial court found that the officer then went to the Defendant to investigate why the Defendant failed to follow the officer’s direction to stop.

At the close of the suppression hearing, during arguments by counsel, the Defendant’s counsel stated:

Had the officer testified that he went up to him the second time to find out why he didn’t follow [his] instructions, I would agree with the Court and I can agree with the General, that’s not in the record, that’s not the record we have before the Court. He said I went up and stopped him to see what he was doing. He didn’t say he stopped him because he didn’t follow my instructions earlier. T[hat’s] a fine line, but I think it’s a line that I think makes a difference in this case

The trial court found:

[T]he testimony may not have used the exact word that, I walked towards the back as he was coming out at that time, or walking back to ask him to stop in order to find out why he didn’t stop in the first place. I mean, he testified that I went back there to find out what he was doing and what was going on. I think that incorporates why he didn’t stop to begin with, so I believe the provisions of that statute do[] apply and therefore he had the legal authority to approach him and stop him after he did not respond to a[n] initial order to stop, therefore I respectfully deny the motion.

In this appeal, the Defendant contends that the trial court erred when it denied his motion to suppress. As discussed below, we may, in our review of the trial court’s ruling, also consider the evidence presented at any subsequent trial. *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998). At the Defendant’s bench trial in this case, Officer Johnson further explained the circumstances of this incident, saying that, when a vehicle came into the parking lot without being flagged, it was considered “unescorted.” The officer said that officers and the traffic offenders that had been stopped were walking around in the parking lot. Officer Johnson, therefore, yelled for the Defendant to stop while flashing his flashlight at him to flag him down because the Defendant posed a safety risk to the officers and the other people whom they had stopped. The Defendant did not stop, passing several marked police cars, and proceeded to the back of the building, where he remained for a couple of minutes. The officer testified he stopped the Defendant to see “what he was doing.”

II. Analysis

On appeal, the Defendant contends that the trial court erred when it denied his motion to suppress evidence against him because the stop of his vehicle was unlawful. The Defendant

asserts that the officer's stop of his vehicle was not supported by reasonable suspicion or specific and articulable facts that the Defendant had or was going to commit a crime. The State responds that the Defendant's failure to obey the officer's command provided the officer justification for the stop.

Both the United States and Tennessee Constitution protect against unreasonable searches and seizures. The Fourth Amendment of the U.S. Constitution proclaims that "the right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." The Tennessee Constitution provides "people shall be secure in their persons, houses, and papers and possessions, from unreasonable searches and seizures." Tenn. Const. art. I, § 7. Generally, to search a person's property, a warrant is needed, and, if a search is conducted without a warrant, "evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997). A trial court accordingly presumes that a warrantless search or seizure is unreasonable unless the State demonstrates that one of the exceptions to the warrant requirement applies to the search. *Id.*

One exception to the warrant requirement is when an officer has probable cause to believe there has been some criminal action involving a vehicle. *Troxell*, 78 S.W.3d 866, 870-71 (Tenn. 2002). At that point, an officer may search a vehicle for evidence supporting that belief. *Id.* For example, an officer may stop and search a vehicle if he has probable cause to believe a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 814-17 (1996); *State v. Randolph*, 74 S.W.3d 330, 334 (Tenn. 2002); *State v. Vineyard*, 958 S.W.2d 730, 734-36 (Tenn. 1997). A second exception exists when specific and articulable facts give an officer reasonable suspicion that an offense has been, or is about to be, committed. *Terry v. Ohio*, 392 U.S. 1, 27 (1968). The reasonable suspicion that an officer must have in order to make an investigatory stop requires "considerably less" certainty than probable cause requires. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

Whether reasonable suspicion exists is determined subjectively, by examining the totality of the circumstances surrounding the stop. *State v. Smith*, 21 S.W.3d 251, 256 (Tenn. Crim. App. 1999). An officer may base his investigatory *Terry* stop on personal observations, information obtained from other officers or agencies, offenders' patterns of operation, and information from informants. See *State v. Lawson*, 929 S.W.2d 406, 408 (Tenn. Crim. App. 1996). The rational inferences that a seasoned officer draws from facts and circumstances may also support his reasonable belief. *Smith*, 21 S.W.3d at 256.

"This Court will uphold a trial court's findings of fact in a suppression hearing unless the evidence preponderates otherwise." *State v. Hayes*, 188 S.W.3d 505, 510 (Tenn. 2006) (citing *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996)). On appeal, "[t]he prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" *State v. Carter*, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are

matters entrusted to the trial judge as the trier of fact.” *Odom*, 928 S.W.2d at 23. Our review of a trial court’s application of law to the facts is de novo, with no presumption of correctness. *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001) (citing *State v. Crutcher*, 989 S.W.2d 295, 299 (Tenn. 1999); *Yeargan*, 958 S.W.2d at 629). When the trial court’s findings of fact are based entirely on evidence that does not involve issues of witness credibility, however, appellate courts are as capable as trial courts of reviewing the evidence and drawing conclusions and the trial court’s findings of fact are subject to de novo review. *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000). Further, we note that “in evaluating the correctness of a trial court’s ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial.” *Henning*, 975 S.W.2d at 299.

We understand the Defendant’s argument to be that the police officer never testified that he stopped the Defendant to ascertain why the Defendant had not obeyed his previous order to stop. We, however, disagree. We agree with the trial court that implicit in the officer’s testimony was the fact that the officer stopped the Defendant to ascertain why the Defendant had disobeyed his command, drove behind the building, waited for more than a minute, and then returned to the parking lot. According to the testimony provided during the motion to suppress hearing and during the Defendant’s trial, the Defendant entered a parking lot that was being used by police to conduct traffic stops and field sobriety tasks. Officer Johnson, fearing for the safety of fellow officers and for those they had detained, flashed his flashlight at the Defendant’s vehicle and yelled for the Defendant to stop.

Tennessee Code Annotated section 55-8-104(a) (2007) states, “No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control or regulate traffic.” The Defendant did not obey the officer’s command to stop and proceeded to the back of the building where he remained for longer than the officer thought necessary to turn around. The officer said that he stopped the Defendant to ascertain what the Defendant was doing and, presumably, why he had failed to obey his command. We conclude that the evidence does not preponderate against the trial court’s finding that the Defendant violated Tennessee Code Annotated section 55-8-104. Further, we conclude that the Defendant’s violation of section 55-8-104 gave the police officer reasonable suspicion, supported by specific and articulable facts, to stop the Defendant. As such the Defendant is not entitled to relief.

III. Conclusion

After a thorough review of the record and applicable authorities, we affirm the trial court’s judgment.

ROBERT W. WEDEMEYER, JUDGE